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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

FrontierVision Operating Partners, L. P.

Coudersport, Pennsylvania

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File No. EB-02-DT-885

NAL/Acct. No. 20032360004

FRN: 0001-6055-59

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: January 27, 2003**

By the District Director, Detroit Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that FrontierVision Operating Partners, L. P. ("FrontierVision"), has apparently violated Section 17.4(a) of the Commission's Rules<sup>1</sup> ("Rules") by failing to register towers in two different locations. This section requires that antenna structure owners register their antenna structures. We conclude that FrontierVision is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

**II. BACKGROUND**

2. The Commission's obstruction marking and lighting of antenna structures and registration requirements operate in concert with the FAA regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications to ensure air safety. We require antenna structure owners to register structures with the Commission and post registration numbers near the base of structures to allow for easy contact if problems arise. The Rules require registration for all antenna structures that may pose a hazard to air navigation and have been in effect since 1996.<sup>2</sup> We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our Rules must be registered immediately or the owners could face a monetary forfeiture or other enforcement action.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1998 and June 30, 1996, and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995).

<sup>3</sup> Subsequent to the expiration of the filing period, the Commission staff issued a *Public Notice* warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face

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3. Commission field agents routinely inspect antenna structures to determine compliance with antenna structure marking, painting and lighting requirements and they also respond to reports of unlit towers. The FAA also routinely notifies Commission field offices when owners fail to report that lights have been repaired. On July 25, 2002, an agent from the Detroit Office conducted an inspection of the antenna structure located on Webb Ridge Road 0.14 miles east of the intersection of Webb Ridge Road and KY-59, approximately 4.2 miles northwest of Olive Hill, Kentucky. The agent observed no ASR number posted at the site. A search of Commission records and subsequent contacts with FrontierVision revealed that the antenna structure was subject to Part 17 of the Rules, was not registered, and accordingly, needed to be registered.

4. On July 26, 2002, an agent from the Detroit Office conducted an inspection of the antenna structure located at 3311 Happy Ridge Road, Ashland, Kentucky. The agent observed no ASR number posted at the site. A search of Commission records and subsequent contacts with FrontierVision revealed that the antenna structure was subject to Part 17 of the Rules, was not registered, and accordingly, needed to be registered.

### III. DISCUSSION

5. Section 17.4(a) of the Rules requires the owner of any existing antenna structure that requires notice of proposed construction to the Federal Administrative Administration, to register the structure with the Federal Communications Commission. According to Commission records, the antenna structures located at Webb Ridge Road 0.14 miles east of the intersection of Webb Ridge Road and KY-59, approximately 4.2 miles northwest of Olive Hill, Kentucky, and at 3311 Happy Ridge Road, Ashland, Kentucky, were not registered.

6. Based on the evidence before us, we find that FrontierVision has willfully<sup>4</sup> and repeatedly<sup>5</sup> violated Section 17.4(a) of the Rules by failure to register its antenna structures. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>6</sup>, sets the base forfeiture amount for failure to file required forms or

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possible monetary forfeitures or other enforcement action. *Public Notice*, "No-Tolerance Policy Adopted For Unregistered Antenna Structures," 1999 WL 10060 (WTB rel. Jan. 13. 1999).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>5</sup> Section 312(f)(2), which also applies to Section 503(b), of the Act, provides that: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>6</sup>47 C.F.R. § 1.80.

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information at three thousand dollars (\$3,000). In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) the Communications Act of 1934, as amended (“Act”).<sup>7</sup> These factors include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement*, statutory factors, and the inflation adjustments to the base amount of FrontierVision’s violation of \$3,000 for each of the two instances of failure to register its antenna structures, we find no compelling evidence to support any adjustments to the base forfeiture amount. Thus, we believe that a total forfeiture amount of six thousand dollars (\$6,000) is warranted.

### IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules<sup>8</sup>, FrontierVision Operating Partners, L. P. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand dollars (\$6,000) for willful and repeated violation of Section 17.4(a) of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, FrontierVision Operating Partners, L.P. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332360004, FRN: 0001-6055-59.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332360004, FRN: 0001-6055-59.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

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<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 C.F.R. §§ 0.111, and 0.311.

<sup>9</sup> See 47 C.F.R. § 1.1914.

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13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Technical & Public Safety Division, 445 12th Street SW, Washington, DC 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to FrontierVision Operating Partners, L. P., 1 North Main Street, Coudersport, Pennsylvania 16915.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater  
District Director  
Detroit Office

Attachment A: Condensed List of Small Entities